Supreme Court, U.S.
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No. 98-274

In The

Supreme Court of the United States

October Term, 1997

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DON R. TYLER, Plaintiff, Petitioner

vs.

STATE OF FLORIDA-GOVERNOR LAWTON CHILES and DEPARTMENT OF INSURANCE-COMMISSIONER OF INSURANCE TOM GALLAGHER, and FLORIDA DIVISION OF RISK MANAGEMENT-DIRECTOR R. J. CASTELLANOS, and FLORIDA DIVISION OF INSURANCE FRAUD-DIRECTOR FRANK DOOLITTLE, and FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES-COMMISSIONER BOB CRAWFORD, and FLORIDA DIVISION OF FORESTRY-DIRECTOR L. EARL PETERSON, and CRAWFORD AND COMPANY-CEO FORREST MINIX, and WILLIAM L. EARP, M.D., and WILLIAM A. FRIEDMAN, M. D., and J. MASON WINES, attorney at law,

Defendants, Respondents.

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On Petition For Writ of Certiorari To the Circuit Court, Tenth Judicial Circuit, Polk County, Florida

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REPLY TO BRIEF IN OPPOSITION

★★★

By Lynda S. Tyler, Next Friend and
Durable Power of Attorney for
Petitioner and
Don R. Tyler, Petitioner
5730 JoAnn Road
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18 pp

1. How the Federal Claims for Which Petitioner Seeks Certiorari Were Addressed and Properly Presented to the State Court.

2. How the State District Court of Appeal Breached Well Established State and Federal Case Law Supporting **U. S. Title 28 §1291** When It or It's Clerks Dismissed Petitioner's Appeal.

3. How State District Court of Appeal Ruling Breached **Fla. R. App. P. 9.110(b)**.

The parties to this case are as follows:

Don R. Tyler, Petitioner

and

The State of Florida, and **Florida Department of Insurance**, and **Florida Division of Risk Management,** and **Florida Division of Insurance Fraud**, and **Florida Department of Agriculture and Consumer Services,** and **Florida Division of Forestry**, and **Crawford and Company**, and **William L. Earp, MD.**, and **William A. Friedman, MD.**, and **J. Mason Wines**, attorney at law, Respondents.

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3. How State District Court of Appeal Ruling Breached **Fla. R. App. P. 9.110(b)**.

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STATEMENT OF THE CASE

Petitioner restates the case as it appears in his Petition for Writ of Certiorari except the typographical error of Appendix page "e" which should read (Filed in the clerks office in Bartow, FL, July 22, 1996) instead of September. Errors do occur as Respondents, State of Florida, should realize when they stated October Term, 1998 instead of 1997 and page 2 and 3 states "Judge 22, 1996" in their Brief in Opposition.

Petitioner would ask this Court to also show that his Petition for Writ of Certiorari was mailed by U.S. Mail on August 10, 1998, which puts the Petition within 90 days of the Florida Supreme Court's denial of Petitioner's Motion to Amend His Jurisdictional Brief and Appendix (Petitioner's brief at Appendix "k").

ARGUMENT

For Granting the Writ

1. **How the Federal Claims for Which Petitioner Seeks Certiorari Were Addressed and Properly Presented to the State Court.**

A letter was placed in the case file by Judge Roberts on April 25, 1995 which stated:

> **"I, Don R. Tyler, further believe that my Fourteenth Amendment rights have been violated by you, Circuit Judge Susan Wadsworth Roberts, in not allowing me equal protection of the laws and the right to redress the wrongs done to me. I also feel that I have again been denied "due process of law" through these actions."**

On June 24, 1997 the 2nd DCA required the filing of a supplemental brief dealing with jurisdiction and it contains the following inserts:

> **"...thus Mr. Tyler was denied due process of law..." "..again Mr. Tyler was denied due process, both on September 18, 1995 and January 8, 1996." "Mr. Tyler was continually denied due process of law by Judge Durrance." "Mr. Tyler was denied discovery in a hearing but never in a written order so that he could appeal it." "Judge Durrance did not allow a**

trial by jury, but dismissed Mr. Tyler's Second Amended Complaint..." "Mr. Tyler did not want to appeal, he wanted a trial by jury. He certainly did not want to spend over $1,000.00 that he could ill afford to appeal his case. According to all the laws, statutory, constitutional, and procedural, he should not have had to appeal his case before it went to a trial by jury...Judge Durrance and Judge Young's orders should be null and void for illegal procedure and breach of constitutional law, and due process of law,...WHEREFORE, Appellant, DON R. TYLER, moves this Court grant his appeal and remand his Second Amended Complaint back for trial by Jury."

The 2nd DCA denied Petitioner's appeal on jurisdiction.

Petitioner stated in his Motion to Amend his Jurisdiction Brief and Appendix to the Florida Supreme Court:

"Petitioner has been denied his constitutional

right to a trial by jury." and asked the Court to **"grant him his day(s) in court and trial by jury."** The Florida Supreme Court denied this amendment.

The case file contains many references to Petitioner being denied his federal civil rights which were presented both to the Civil and District Appeals Court and even the Florida Supreme Court. Some of these were presented in the Petition for Writ of Certiorari and in this Reply.

2. How the State District Court of Appeal Breached Well Established State and Federal Case Law Supporting U. S. Title 28 §1291 When It or It's Clerks Dismissed Petitioner's Appeal.

Respondent Crawford and Company presented case **Schwertfeger v. Constant, 109 So 2d 173 (Fla. 2nd DCA 1959)**. At page 175 of that case it states:

> **"The rule set out herein, followed by the Supreme Court of Florida seems to be substantially in accord with the Federal decisions which have held that an order granting a motion to dismiss a complaint, but**

not actually dismissing it, is not a final decision within the meaning of 28 U.S.C.A. § 1291, and therefore is not appealable. See *Turnbull v. Cyr, 184 F. 2d 117 and cases cited therein.*" Renard v. Kirkeby Hotels, Inc., 99 So. 2d 719, 721.

"Interlocutory order granting motion to dismiss was not appealable "final decision", 28 U.S.C.A. § 1291." United States of America v. Woodard, 257 F. 2d 805 (5th Clr. 1958)"

This is still the accepted case law of Florida, even after 2nd DCA ruling to the contrary against Petitioner. **Department of Revenue v. Bander, 702 So. 2d 1341 (Fla. 5th DCA 1997)** The ruling was Dec. 12, 1997 (holding Whether order is final for purposes of appeal is not merely a question of semantics, but rather one of jurisdiction. Orders which grant motions to dismiss but lack words of actual dismissal are not appealable because they are not final.) The 2nd DCA did not have jurisdiction over Judge Young's July 22, 1996 order, it was not a final order, it only granted motions to dismiss.

3. How State District Court of Appeal Ruling Breached Fla. R. App. P. 9.110(b).

Williams v. State of Florida, 324 So. 2d 74 (Fla. 1975) Presented by Respondent Crawford and Company at page 78 (holding "Appeals from **final decisions**, orders, judgments or decrees shall be commenced within 30 days from the *rendition* of the **final decision**, order judgment or decree appealed from,...") *emphasis added.*

Fla. R. App. P. § 9.110(b) 1977 Amendment,

"Subdivision (b) and (c) establish the procedure for commencing an appeal proceeding. Within 30 days of the rendition of the **final order** the appellant must file 2 copies of the notice of appeal..." *emphasis added.*

Judge Young's July 22, 1996 order was not a final order and it was not appealable according to **Fla. R. App. P. § 9.110(b).** Judge Young also replaced this order with an amended order dated August 21, 1996. **Hunter v. Dennies Contracting Co., Inc., 693 So. 2d 615, 616 (Fla. 2d DCA 1997)** (holding at all times prior to entry of final

order terminating action, trial court has inherent authority to reconsider any of its nonfinal rulings, and if it deems it appropriate, to alter or retract them.)

The amended order also only granted motions to dismiss and as to the Amended Complaint, not the Second Amended Complaint **(See Appendix A)**. The only order of Judge Young's which said anything about dismissing the Second Amended Complaint was the September 3, 1996 order which Petitioner appealed on September 30, 1996 when he complied with **Fla. R. App. P. § 9.110(b) (See Appendix B).**

CONCLUSION

Petitioner was denied his Fourteenth Amendment rights to equal protection of the laws when he was defrauded of his rights to the Florida Worker's Compensation laws.

Petitioner was defrauded of overtime which breached the Fair Labor Standards Act of 1938.

The Second Amended Complaint contains a denial of due process count and Petitioner has been further denied due process of law by the Florida court system.

Petitioner made proper demands for a trial by jury on all his counts and this was denied by the lower court with each new judge which breached **Fla. R. Civ. P. § 1.430 (a) Right Preserved.** The right of trial by jury as declared by the Constitution or by statute shall be preserved to the parties inviolate. This also breached the Seventh Amendment of the United States Constitution.

A motion to dismiss is not even a proper motion to file when a party has made a demand for a trial by jury. **Fla. R. Civ. P. § 1.420(b)** "After a party seeking affirmative relief in an action tried by the court without a jury has completed the presentation of evidence, any other party may move for a dismissal on the ground that on the facts and the law the party seeking affirmative relief has shown no right to relief."

Petitioner was not allowed to present his evidence, much less to present it to a jury. The lower court has also granted attorney fees against Mr. Tyler. Where will the wrong doing end?

WHEREFORE, DON R. TYLER, moves this Court grant him his Petition for Writ of Certiorari so that he might have his day(s) in court and trial by jury.

Respectfully:

Lynda S. Tyler, Next Friend and Durable Power of Attorney for Petitioner

and

Don R. Tyler, Petitioner

5730 JoAnn Road

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Appendix A

IN THE CIRCUIT COURT AND FOR POLK COUNTY, FLORIDA

DON R. TYLER,

Plaintiff,

v. **CASE NO. GCG94-541**

STATE OF FLORIDA, et al.,

Defendants.

_____/

AMENDED ORDER DISMISSING COUNTS I-III OF THE COMPLAINT WITH PREJUDICE UPON REHEARING AND COUNT IV WITHOUT PREJUDICE

THIS MATTER came on for consideration without a hearing on the Plaintiff's Response to Order Denying in Part Plaintiff's Motion for Clarification. After consideration of the Plaintiff's well-written response, the Court confirms its earlier Order except as amended herein.

The case comes before the Court with a Byzantine procedural history. Plaintiff originally filed this case in March of 1994, generally alleging fraud and conspiracy. In October of 1994, Judge Green recused.

Judge Roberts dismissed Plaintiff's Complaint with prejudice in April of 1995. Judge Roberts recused.

Judge Durrance dismissed Plaintiff's Complaint with prejudice in February of 1996. Judge Durrance recused.

Along the way other judges were involved in varying degrees. The Court now reconsiders Judge Durrance's Order dismissing the case with prejudice upon Plaintiff's timely motion and finds that the Plaintiff's Amended Complaint fails to state a cause of action. This notwithstanding the fact that Plaintiff and his wife ardently believe that the governmental Defendants conspired with the other Defendants to purposefully cripple him and then to deny him worker's compensation benefits to save the state money.

Plaintiff would have this Court replace well-settled rules of law with legal concepts from Plaintiff's perspective, there should be a remedy for the perceived wrong. The wrong, however, either did not occur or Plaintiff has been unable to allege facts which are legally sufficient to support it.

Plaintiff's motion for a reasonable accommodation at the hearing was made moot by his wife's participation.

Defendants' motion to declare F.S. 38.07 unconstitutional as applied on due process grounds and because it violates the separation of powers doctrine is granted in part. For the reasons stated herein, the Court does not reach the due process issue and grants the motion to the extent that Fla. R. Jud. Admin. 2.160 conflicts with F. S. 38.07. According, it is

ORDERED AND ADJUDGED that the motion to dismiss the Amended Complaint is **GRANTED** with prejudice as to all Defendants,

except that the Motion to Dismiss with prejudice is **DENIED** with regard to the State of Florida as to Count IV, a claim alleging a violation of the Fair Labor Standards Act. Count IV is dismissed without prejudice. Plaintiff has 20 days from the date hereof to file an amended claim for under-compensated overtime **only** alleging with specificity the time periods involved. The Court retains jurisdiction to decide costs and attorney fees, if any. The Plaintiff is notified that he has 30 days to appeal this Order as to Counts I through III to the Second District Court of Appeal.

DONE AND ORDERED in Bartow, Polk County, Florida, this 21st day of August, 1996

s/Robert A. Young
ROBERT A. YOUNG
Circuit Judge

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IN THE CIRCUIT COURT IN AND FOR POLK COUNTY, FLORIDA

DON R. TYLER,
Plaintiff,

v. **CASE NO. GCG94-541**

STATE OF FLORIDA, et al.,
Defendants.
_____/

ORDER ON PLAINTIFF'S MOTION FOR CLARIFICATION AND NOTICE FOR JURY TRIAL

THIS MATTER came on for consideration without a hearing on the Plaintiff's Motion for Clarification of "Order Denying Motion for Disqualification of Judge" alleging the prior recusals were not on the motion of the Plaintiff, and the Plaintiff's Notice for Jury Trial claiming the Court did not dismiss Plaintiff's Second Amended Complaint.

Because the Court intended to, and by its earlier order, did dismiss Plaintiff's Second Amended Complaint partly with prejudice and because at least one prior recusal was the product of Plaintiff's Motion for Disqualification, it is

ORDERED AND ADJUDGED that the Plaintiff's Motion for Clarification is hereby **DENIED,** and the Plaintiff's Notice for Jury Trial is hereby stricken as premature.

DONE AND ORDERED in Bartow, Polk County, Florida, this 29 day of August, 1996. (Filed by Clerk September 3, 1996)

s/ Robert A. Young
ROBERT A. YOUNG
Circuit Judge

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